

**Village of Irvington  
Zoning Board of Appeals**

Minutes of Meeting held August 27, 2002

A meeting of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M. on Tuesday, August 27, 2002, in the Trustees' Meeting Room, Town Hall, Irvington, N.Y.

The following members of the Board were present:

Louis C. Lustenberger, Chairman  
George Rowe  
Paul M. Giddins  
Robert Bronnes  
Brian Barrett

Mr. Lustenberger acted as Chairman and Mr. Giddins as Secretary of the meeting.

The minutes of the July 25, 2002 were duly approved.

There were two matters on the agenda:

Case No.

**2002-20      Kevin and Mary Lockhart** – 67 Riverview Road (Sheet 10C, Block 228; Lot 5)

The Applicant appeared with his architect Howard Raabe.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Irvington Zoning Ordinance (the “Code”), the Applicant filed the applicable proofs of service.

The Applicant sought a variance from the provisions of §§ 224-11 and 224-89 of the Code, relating to front yard set back and non- conforming lot requirements, so as to permit the construction of additions to the front and rear of the Applicant’s house.

The Board reviewed drawings submitted by the Applicant, and noted that the addition the Applicant sought to the front of the house was a portico over the front door and intruded by approximately three feet into the front yard set back. The Board concluded that such an intrusion was small enough so as to not negatively affect the criteria for the granting of a variance set forth in Village Law § 7-712b.

After weighing the applicable factors, the Board concluded that, with respect to the front yard setback variance sought for the proposed portico, the benefit to the Applicant from granting the variance outweighed any detriment to the health, safety and welfare of the neighborhood or community. The Board also found that granting the variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties, and that the benefit sought by Applicant could not feasibly be achieved by any method other than a variance. Finally, the Board found that the requested variance would not adversely affect the physical or environmental conditions of the neighborhood or district, and that the hardship necessitating the request for the variance, while self created, was not for that reason alone sufficient to outweigh the factors favoring a grant of the variance.

With respect to the additions sought to the rear of the house, an added room and a patio, the Board noted that they do not violate the Code's setback or coverage provisions. A variance was sought because the lot is nonconforming in size, being approximately 5,000 square feet less than the 20,000 square feet required in a 1F-20 district. The Board noted that the requested variance may contravene the provisions of Code § 224-89, prohibiting certain changes to non-conforming buildings and uses. The Board found that both the building and its use conform to the Code, and concluded that § 224-89 could be found inapplicable for that reason alone. The Board found § 224-89 to be inapplicable also because subsection A of § 224-89 prohibits changes to nonconforming uses of "buildings or open land." As noted, the use of the building conforms to the Code. The Board noted that "open land" could refer to undeveloped land, not to a developed parcel such as the Applicant's, and thus the section would be inapplicable to the Applicant's parcel. The Board further found that even if "open land" applied to the undeveloped portion of the Applicant's lot, that portion of the lot is not sought to be varied.

The Board noted that subsection B of § 224-89 prohibits certain changes to buildings which "house a non-conforming use". However, the Applicant's property does not house a non-conforming use.

For the reasons noted above, the Board concluded that § 224-89 does not apply to the application, and even if it did, the Board would have the power to vary its provisions and would do so because the proposed changes to the house are not increasing the nonconformity or affecting it in any way.

There was no opposition to the application

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. The Board voted unanimously to grant the request for a variance from the provisions of §224-11 of the Code, to permit the construction of a portico to the front of the Applicant's house. The Board noted that a vote on the proposed additions to the rear of the house was not necessary since §224-89 is not applicable to the application.

**2002-21      Daniel L. Rosenfield – 58 Butterwood Lane West (Sheet 13, Lot P43)**

The Applicant appeared with Deborah Wilten-Cohen of the architectural firm of Arthur Chabon.

In lieu of the verified statement of compliance with the notice provisions of § 224-98(A) of the Code, the Applicant filed the applicable proofs of service.

This matter was continued from the July 25, 2002 meeting. The Applicant sought a variance from the provisions of § 224-11 of the Code, relating to rear yard setbacks, and §224-13 of the Code, relating to lot coverage, so as to permit the construction of an addition to the side and rear of the Applicant's house and attached garage.

The Board reviewed drawings submitted by the Applicant and noted that they altered the plans submitted at the Board's previous hearing on this matter on July 25, 2002, so as to reduce the amount of coverage and the intrusion into the rear-yard set back, in response to this Board's suggestion that the Applicant alter the plans to reduce the size of the variances requested. The reduction in coverage reduced the excess above the permitted 3,260 square feet from 1,725 square feet to 1,344 square feet, or from 53% to

41%. The reduction of the set back intrusion moved the intrusion back by 6.5 feet to 21.5 feet from the lot line, versus a required 35 feet.

The Board found that the Applicant's efforts to reduce the variance were significant and undertaken in good faith, but still leave significant variances. Apart from the size of the variances, however, the Board concluded that the other factors enumerated in Village Law § 7-712-b weighed in favor of granting of the variance. This was so because the effect on the character of the neighborhood and on nearby properties was not negative, and was in some respects positive, in that the additions are attractive, well designed, conform to other properties in the neighborhood and are completely screened by existing vegetation.

The Board also noted that the added coverage was only 16% above that previously approved, according to the applicant, by the Village Building Inspector in 1987. The Applicant stated that he relied on the prior approval by the Building Inspector in measuring the instant addition. The Board found this prior approval to be an ameliorating circumstance peculiar to, and supportive of, this application.

There was no opposition to the application.

The Chairman then moved that a vote be taken on the application. The motion was seconded and thereafter the Board voted on the Applicant's request for a variance. Messrs. Lustenberger, Giddins, Barrett and Rowe voted to grant the request for a variance. Mr. Bronnes abstained from voting. The request was approved, so as to permit of an addition to the side and rear of the Applicant's house and attached garage.

There being no further business, the meeting was, upon motion duly made and seconded, unanimously adjourned.

/s/ Paul M. Giddins  
Paul M. Giddins